

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA,

v.

Criminal Action No. 2:14-cr-13-1

CHAD EDWARD CUTRIGHT,
Defendant.

ORDER/OPINION REGARDING PLEA OF GUILTY

This matter has been referred to the undersigned Magistrate Judge by the District Court for purposes of conducting proceedings pursuant to Federal Rule of Criminal Procedure 11. Defendant, Chad Edward Cutright, in person and by counsel, Brian J. Kornbrath, appeared before me on April 8, 2014. The Government appeared by Assistant United States Attorney Stephen Warner. The Court determined that Defendant was prepared to enter a plea of “Guilty” to Count Four of the Indictment.

The Court proceeded with the Rule 11 proceeding by first placing Defendant under oath.

The Court then inquired of Defendant whether he was a citizen of the United States. Defendant responded that he is a citizen. The undersigned asked Defendant whether he understood that if he were not a citizen of the United States, by pleading guilty to a felony charge he would be subject to deportation at the conclusion of any sentence; that he would be denied future entry into the United States; and that he would be denied citizenship if he ever applied for it. Defendant stated that he understood.

The Court determined that Defendant’s plea was pursuant to a written plea agreement, and asked the Government to tender the original to the Court. The Court asked counsel for the Government if the agreement was the sole agreement offered to Defendant. The Government responded that it was and counsel for Defendant confirmed the same. The Court asked counsel for the Government to summarize the written Plea Agreement. Defendant stated that the agreement as

summarized by counsel for the Government was correct and complied with his understanding of the agreement. The Court **ORDERED** the written Plea Agreement filed.

The Court next inquired of Defendant concerning his understanding of his right to have an Article III Judge hear the entry of his guilty plea and his understanding of the difference between an Article III Judge and a Magistrate Judge. Defendant thereafter stated in open court that he voluntarily waived his right to have an Article III Judge hear and accept his plea and voluntarily consented to the undersigned Magistrate Judge hearing and accepting his plea, and tendered to the Court a written Waiver of Article III Judge and Consent To Enter Guilty Plea Before Magistrate Judge, which waiver and consent was signed by Defendant and countersigned by Defendant's counsel and was concurred in by the signature of the Assistant United States Attorney appearing.

Upon consideration of the sworn testimony of Defendant, as well as the representations of his counsel and the representations of the Government, the Court finds that the oral and written waiver of Article III Judge and consent to enter guilty plea before a Magistrate Judge was freely and voluntarily given and the written waiver and consent was freely and voluntarily executed by Defendant, Chad Edward Cutright, only after having had his rights fully explained to him and having a full understanding of those rights through consultation with his counsel, as well as through questioning by the Court. The Court **ORDERED** the written Waiver and Consent to Enter Guilty Plea before a Magistrate Judge filed and made part of the record.

The undersigned then reviewed with Defendant Count Four of the Indictment and the elements the Government would have to prove, charging him with possession of pseudoephedrine to be used in the manufacture of methamphetamine, in violation of 21 U.S.C. §§ 841(c)(1). The undersigned then reviewed with Defendant the statutory penalties applicable to an individual adjudicated guilty of the felony charges contained in Count Four of the Indictment, the impact of the sentencing guidelines on

sentencing in general, and inquired of Defendant as to his competency to proceed with the plea hearing. From said review the undersigned Magistrate Judge determined Defendant understood the nature of the charges pending against him and understood the possible statutory maximum sentence which could be imposed upon his conviction or adjudication of guilty on Count Four was imprisonment for a term of not more than twenty (20) years; understood that a fine of not more than \$250,000.00 could be imposed; understood that both fine and imprisonment could be imposed; understood he would be subject to a period of at least three (3) years of supervised release; and understood the Court would impose a special mandatory assessment of \$100.00 for the felony conviction payable on or before the date of sentencing. Defendant also understood that his sentence could be increased if he had a prior firearm offense, violent felony conviction, or prior drug conviction. He also understood he might be required by the Court to pay the costs of his incarceration and supervised release.

The undersigned also reviewed with Defendant his waiver of appellate rights as follows:

Ct: Did you and Mr. Kornbrath discuss that you have a right under 18 U.S.C. § 3742 to appeal your conviction and sentence to the Fourth Circuit Court of Appeals?

Def. Yes.

Ct. Did you and he discuss that you may be able to file a motion under 28 U.S.C. § 2255 collaterally attacking or challenging your sentence and how that sentence is being carried out?

Def. Yes.

Ct. Did you understand from paragraph 13 of your written plea agreement that you are voluntarily waiving your right to appeal your sentence and the manner in which the sentence was determined on any ground whatever, including the grounds set forth in 18 U.S.C. § 3742, if

the actual sentence that the judge imposes is consistent with a Guidelines calculated sentence with a total offense level of 23 or below? You're shaking your head.

Def. Yes, I'm sorry.

Ct. Did you intend to give up that valuable direct appeal right as conditionally set forth in paragraph 13?

Def. Yes, Your Honor, I did.

Ct. Did you also understand that under paragraph 14, you are giving up your right to collaterally attack or challenge the sentence and how it was arrived at—it looks to me like it is completely given up?

Def. Yes.

Ct. And that's your understanding also?

Def. Yes, Your Honor.

Ct. And that's what you intended to do by signing the agreement with paragraph 14 in it?

Def. Yes.

From the foregoing colloquy the undersigned determined that Defendant understood his appellate rights and knowingly gave up those rights pursuant to the condition contained in the written plea agreement.

The undersigned Magistrate Judge further examined Defendant relative to his knowledgeable and voluntary execution of the written plea bargain agreement, and determined the entry into said written plea bargain agreement was both knowledgeable and voluntary on the part of Defendant. The undersigned then inquired of Defendant regarding his understanding of the written plea agreement. Defendant stated he understood the terms of the written plea agreement and also stated that it contained

the whole of his agreement with the Government and no promises or representations were made to him by the Government other than those terms contained in the written plea agreement.

The undersigned Magistrate Judge further inquired of Defendant, his counsel, and the Government as to the non-binding recommendations and stipulation contained in the written plea bargain agreement and determined that Defendant understood, with respect to the plea bargain agreement and to Defendant's entry of a plea of guilty to the felony charge contained in Count Four of the Indictment, the undersigned Magistrate Judge would write the subject Order and would further order a pre-sentence investigation report be prepared by the probation officer attending the District Court. The undersigned advised the Defendant that the District Judge would adjudicate the Defendant guilty of the felony charged under Count Four of the Indictment. Only after the District Court had an opportunity to review the pre-sentence investigation report, would the District Court make a determination as to whether to accept or reject any recommendation or stipulation contained within the plea agreement or pre-sentence report. The undersigned reiterated to the Defendant that the District Judge may not agree with the recommendations or stipulation contained in the written agreement. The undersigned Magistrate Judge further advised Defendant, in accord with Federal Rule of Criminal Procedure 11, that in the event the District Court Judge refused to follow the non-binding recommendations or stipulation contained in the written plea agreement and/or sentenced him to a sentence which was different from that which he expected, he would not be permitted to withdraw his guilty plea. Defendant and his counsel each acknowledged their understanding and Defendant maintained his desire to have his plea of guilty accepted.

Defendant also understood that his actual sentence could not be calculated until after a pre-sentence report was prepared and a sentencing hearing conducted. The undersigned also advised, and Defendant stated that he understood, that the Sentencing Guidelines are no longer mandatory, and that,

even if the District Judge did not follow the Sentencing Guidelines or sentenced him to a higher sentence than he expected, he would not have a right to withdraw his guilty plea. Defendant further stated his attorney showed him how the advisory guideline chart worked but did not promise him any specific sentence at the time of sentencing. Defendant stated that he understood his attorney could not predict or promise him what actual sentence he would receive from the sentencing judge at the sentencing hearing. Defendant further understood there was no parole in the federal system, although he may be able to earn institutional good time, and that good time was not controlled by the Court, but by the Federal Bureau of Prisons.

Thereupon, Defendant, Chad Edward Cutright, with the consent of his counsel, Brian J. Kornbrath, proceeded to enter a verbal plea of **GUILTY** to the felony charge in Count Four of the Indictment.

The Court would generally hear the testimony of a Government witness at this point in the hearing to support an independent basis in fact for the guilty plea. In this case, the parties agreed that the Government would provide a proffer to provide that independent basis in fact. The Government proffered that on March 12, 2013, Corporal Shrader of the West Virginia State Police received a dispatch regarding a 911 call placed in Barbour County, West Virginia, within the Northern District of West Virginia. The 911 call was regarding a domestic disturbance at the residence of Defendant and his girlfriend, co-defendant Natusha Biggins. Defendant reported that Biggins had been using drugs all day and that he was trying to stop her from leaving with her children in their car. Upon arrival at the residence, Corporal Shrader observed a blue backpack lying on the ground. He opened the backpack and saw that it contained materials used to manufacture methamphetamine. Also in the bag was a box of Wal-itin D 24, which contains pseudoephedrine. That box of Wal-itin D 24 was purchased at the Walgreens in Elkins, West Virginia, at 4:14 p.m. A review of NPLEX indicated that Defendant had made that purchase. Defendant gave written consent for Corporal Shrader to search

the residence, and Corporal Shrader located more methamphetamine manufacturing materials inside the residence. Defendant stated that he had completed approximately 18 to 20 “shake and bake” methamphetamine “cooks” and that Biggins’ children had been present for some of these “cooks.” Three days later, on March 15, 2013, Defendant went to the State Police detachment in Barbour County and gave a recorded confession to Corporal Shrader. A review of NPLEX indicated that Defendant and Biggins each made three (3) purchases of pseudoephedrine during the time period covered by the conspiracy. Those purchases occurred on December 22, 2012, January 5, 2013, and March 12, 2013. Defendant’s December 22, 2012 purchase of pseudoephedrine is the subject of Count Four, and that purchase was made at the Rite Aid in Philippi, Barbour County, West Virginia.

Defendant stated he heard, understood, and did not disagree with the Government’s proffer. The undersigned United States Magistrate Judge concludes the offenses charged in Count Four of the Indictment are supported by an independent basis in fact concerning each of the essential elements of such offense. That independent basis is provided by the Government’s proffer.

Upon consideration of all of the above, the undersigned Magistrate Judge finds that Defendant is fully competent and capable of entering an informed plea; Defendant is aware of and understood his right to have an Article III Judge hear and accept his plea and elected to voluntarily consent to the undersigned United States Magistrate Judge hearing and accepting his plea; Defendant understood the charges against him, not only as to the Indictment as a whole, but in particular as to Count Four of the Indictment; Defendant understood the consequences of his plea of guilty, in particular the maximum statutory penalty to which he would be exposed for Count Four; Defendant made a knowing and voluntary plea of guilty to Count Four of the Indictment; and Defendant’s plea is independently supported by the Government’s proffer which provides, beyond a reasonable doubt, proof of each of the essential elements of the charges to which Defendant has pled guilty.

The undersigned Magistrate Judge therefore **ACCEPTS** Defendant's plea of guilty to Count Four of the Indictment and recommends he be adjudged guilty on said charges as contained in Count Four of the Indictment and have sentence imposed accordingly.

The undersigned further directs that a pre-sentence investigation report be prepared by the adult probation officer assigned to this case.

Defendant is released pursuant to the Order Setting Conditions of Release previously entered in this matter.

The Clerk of the Court is directed to send a copy of this Order/Opinion to counsel of record.

DATED: April 9, 2014

John S. Kaul

JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE